85-1962

No. 85-_____

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

PAUL R. RIDDICK, JR., *et al.*,

Petitioners,

v.

THE SCHOOL BOARD OF THE CITY OF NORFOLK, *et al.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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QUESTIONS PRESENTED

I. Whether a public school system that has been declared "unitary" only after eliminating all one-race schools through a desegregation plan conforming to Swann v. Charlotte-Mecklenburg Board of Education, 401 U.S. 1 (1971), will violate its constitutional duty to eradicate racial segregation as announced in Brown v. Board of Education, 347 U.S. 483 (1954), if it then dismantles the desegregation plan that made it "unitary" and assigns almost 40% of black elementary pupils to ten all-black schools which existed prior to the unitary plan?

II. Does the proposed plan violate the Fourteenth Amendment on this record where:

(a) It is undisputed that the plan will have a substantial segregative effect on thousands of pupils who now attend integrated schools, by placing two-thirds of white elementary pupils in 14 majority white schools and 39% of blacks in ten 97 to 100% black schools; and

(b) The school board adopted the plan to serve the explictly articulated racial purpose of increasing the number of white pupils attending the Norfolk public schools, and this is to be achieved by minimizing the number of blacks attending schools with whites by creating 14 schools having over 50% white pupils in accord

with the board's public opinion poll showing that white parents (but not black parents) opposed sending their children to schools where they were less than a majority?

LIST OF PARTIES

1. The named plaintiffs in this certified class action are listed below:

Paul R. Riddick, Jr. and Phelicia Riddick, infants by Paul R. Riddick, their father and next friend;

Cynthia C. Ferebee, Johnny Ferebee, Gary Ferebee, and Wilbert Ferebee, infants, by Rev. Luther M. Ferebee, their father and next friend;

Anita Fleming, infant, by Blanche Fleming, her mother and next friend;

Darrell McDonald and Carolyn McDonald, infants, by Ramion McDonald, Sr., their father and next friend;

Eric E. Nixon and James L. Nixon, infants, by Patricia Nixon, their mother and next friend;

Johnny Owens, Trent Owens, Myron Owens, Shawn Owens, and Antonio Owens, infants by Annette Owens, their mother and next friend;

Paul R. Riddick, Rev. Luther M. Ferebee, Blanche Fleming, Ramion McDonald, Sr., Patricia Nixon, and Annette Owens.

The district court certified a plaintiff class consisting of "all present and future black schoolchildren in the public school system of the City of Norfolk, Virginia" pursuant to Rules 23(a)(1) and 23 (a)(2) Fed. R. Civ. P.

2. The defendants are the School Board of the City of Norfolk, and the members of the school board sued in their official capacity. The individual defendants are Thomas G. Johnson, Jr., Dr. John H. Foster, Dr. Lucy R. Wilson, Jean C. Bruce, Cynthia A. Heide, Robert L. Hicks, and Hortense R. Wells. Mr. G. Wesley Hardy replaced Dr. Foster on the Board.

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No. 85- ____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1985

PAUL R. RIDDICK, JR. et al,

Petitioners,

v.

THE SCHOOL BOARD OF THE
CITY OF NORFOLK, et al.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

==========

The petitioners Paul R. Riddick, Jr. et al. respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of

Appeals for the Fourth Circuit, entered in the above-entitled proceeding on February 6, 1986.

OPINIONS BELOW

The opinion of the Court of Appeals for the Fourth Circuit is reported at 784 F.2d 521, and is reprinted in the appendix hereto, p. 1A, infra.

The Memorandum Opinion of the United States District Court for the Eastern District of Virginia (MacKENZIE, C.J.), dated July 9, 1984 is reported at 627 F.Supp. 814 (E.D. Va. 1984). See appendix p. 99A, infra.

JURISDICTION

Petitioners brought suit in the Eastern District of Virginia invoking federal jurisdiction under 42 U.S.C. sections 1981, 1983 and 1988, and under 28 U.S.C. sections 1331, 1343(3) and 1343(4).

On July 9, 1984, after a trial on the merits, the Court denied petitioners' prayer for injunctive relief.

On petitioners' appeal, the Fourth Circuit on February 6, 1986 entered a judgment and opinion affirming the District Court. A timely petition for rehearing and suggestion for rehearing en banc was denied March 19, 1986. App. 158A, infra.

The jurisdiction of this Court to review the judgment of the Fourth Circuit is invoked under 28 U.S.C. section 1254(1).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

STATEMENT OF THE CASE

Introduction

This class action was filed in May 1983 by a group of black parents seeking an injunction to prevent the Norfolk School Board from dismantling a desegregation plan for elementary pupils and changing ten currently integrated schools into one-race schools which will range from 97 to 100% black and average 99% black. Both courts below have approved the proposed plan, which would assign 39 percent of Norfolk's black elementary students to the ten all-black schools.[1] The same ten schools were all-black in 1969 prior to the final desegregation plan ordered by the courts in a prior case in

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[1] About 59% of the pupils are black. It was estimated that 4738 black and 54 white children would attend the 10 black schools. The remaining 26 elementary schools would have 8403 white and 7416 black pupils.

1971. Thus, after 15 years of desegregation, Norfolk's schools will again become substantially segregated unless this Court intervenes.

In a historic prior lawsuit which lasted 19 years black parents successfully overcame Virginia's official policy of "massive resistance" and desegregated the public schools of Norfolk, Virginia.[2] That

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[2] Opinions in the earlier case and related cases were:

1. Beckett v. School Board of City of Norfolk, 148 F.Supp. 430 (E.D. Va.), affirmed 246 F.2d 325 (4th Cir.) cert. den. 355 U.S. 855 (1957).
2. Beckett v. School Board of the City of Norfolk, 2 Race Relations Law Reporter 337 (Feb. 12, 1957).
3. Beckett v. School Board of the City of Norfolk, 3 Race Relations Law Reporter 942-964 (1958).
4. Beckett v. School Board of the City of Norfolk, 3 Race Relations Law Reporter 1155 (E.D. Va. 1958); affirmed 260 F.2d 18 (4th Cir. 1958).
5. James v. Almond, 170 F.Supp. 331 (E.D.Va. 1959); 3-Judge Court.
6. Harrison v. Day, 200 Va. 439, 106 S.E.2d 636 (1959).
7. James v. Duckworth, 170 F.Supp. 342 (E.D. Va. 1959); affirmed 267 F.2d 224 (4th Cir. 1959).

litigation required ten appeals to the

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8. Beckett v. School Board of the City of Norfolk, 181 F.Supp. 870 (E.D. Va. 1959). Beckett v. School Board of the City of Norfolk, 5 Race Rel. L. Rep. 407 (Oct.23, 1959).

9. Beckett v. School Board of the City of Norfolk, 185 F.Supp. 459 (1959); affirmed sub. nom. Farley v. Turner, 281 F.2d 131 (4th Cir. 1960).

10. Hill v. School Board of City of Norfolk, 282 F.2d 473 (4th Cir. 1960).

11. Beckett v. School Board of the City of Norfolk, 9 Race Relations Law Reporter 1315 (E.D.Va. 1964); vacated and remanded sub. nom. Brewer v. School Board of the City of Norfolk, 349 F.2d 414 (4th Cir. 1965).

12. Beckett v. School Board of the City of Norfolk, 11 Race Relations Law Reporter 218 (E.D. Va. 1965).

13. Beckett v. School Board of the City of Norfolk, 11 Race Relations Law Reporter 1273 (E.D. Va. 1966).

14. Beckett v. School Board of the City of Norfolk, 269 F.Supp. 118 (E.D. Va. 1967); supplemental memorandum 12 Race Rel. L. Rep. 867 (June 2, 1967).

15. Brewer v. School Board of the City of Norfolk, 397 F.2d 37 (4th Cir. 1968) en banc.

16. Beckett v. School Board of the City of Norfolk, 302 F.Supp. 18 (E.D.Va. 1969).

17. Beckett v. School Board of the City of Norfolk, 308 F.Supp. 1274 (E.D. Va. 1969); reversed and remanded sub. nom. Brewer v. School Board of the City of Norfolk, 434 F.2d 408 (4th Cir.

Fourth Circuit before it finally produced an acceptable desegregation plan.[3] The case was concluded on February 14, 1975, four years after implementation of a desegregation plan which used the techniques of rezoning, pairing and busing approved in Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971), when counsel agreed to the following order:

> It appearing to the Court that all issues in this action have been disposed of, that the School Board of the City of Norfolk has satisfied its affirmative duty to desegregate, that

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1970) en banc; cert. den. 399 U.S. 929 (1970).

18. Brewer, sub nom. Adams v. School Dist. No. 5, Orangeburg Co. S.C., 444 F.2d 99 (4th Cir.) en banc; cert. den. 404 U.S. 912 (1971).

19. Brewer v. School Board of City of Norfolk, 456 F.2d 943 (4th Cir.), cert. den. 406 U.S. 933 (1972).

20. Brewer v. School Board of City of Norfolk, 500 F.2d 1129 (4th Cir. 1974) (attorneys fees).

[3] An eleventh appeal involved attorneys fees. See note 1 supra.

racial discrimination through official action has been eliminated from the system, and that the Norfolk School System is now "unitary", the Court doth accordingly

ORDER AND DECREE that this action is hereby dismissed, with leave to any party to reinstate this action for good cause shown.

The Beckett/Brewer Case, 1956-1975.

The Norfolk school desegregation case began in 1956 amidst Virginia's official policy of "massive resistance" to Brown v. Board of Education, 347 U.S. 483 (1954). An injunction was issued and affirmed on appeal in 1957, but no desegregation occurred during the first four years after Brown I. Beckett, supra, 246 F.2d 325. In the fall of 1958, when the District Court finally ordered the admission of 17 black children to several Norfolk schools (while denying the similar requests of 134 others), Virginia's Governor issued a proclamation closing the schools. Bec-

kett, supra, 260 F.2d 18; James v. Almond, supra, 170 F.Supp. 331. After state and federal courts simultaneously ruled the school closing unconstitutional (James, supra, Harrison v. Day, supra), Norfolk's City Council was enjoined to prevent the enforcement of resolutions cutting off funds to the integrated schools. Duckworth v. James, supra, 267 F.2d 224.

Even after the first handful of black children were admitted to white schools, the court found "the melody of massive resistance lingers on" (185 F.Supp. at 462), as black pupils ran a gauntlet set up by the state's "pupil placement board" laws and procedures. Farley v. Turner, supra, 281 F.2d 131. Progress was slow. By 1964, 1251 of 13,348 black children elected to transfer to white schools while the all-black schools remained intact. Beckett, supra, 9 Race Rel. Law Rep. 1315.

Plaintiffs' attempts to obtain system-wide desegregation and faculty desegregation were initially rejected. Brewer, supra, 349 F.2d 414. In 1964 the board adopted neighborhood attendance areas, and in some districts allowed pupils an option to attend either a black or a white school. The neighborhood plan was amended repeatedly as litigation continued during 1965-1968. See note 2 supra; Brewer, supra, 397 F.2d 37.

In 1969 the board proposed, and the district court approved, implementation of a so-called "optimal plan of desegregation" which was an effort to create "middle class" schools. Beckett, supra 308 F.Supp. 1274. The premise of the plan was that 30% Negro schools would be "optimal", and the board drew "neighborhood" school zones to achieve this result in a few schools. The Fourth Circuit

rejected the plan in 1970 because the "optimal" neighborhood zones left 76% of the black elementary pupils attending 19 all-black schools. Brewer, supra, 434 F.2d 408. In 1970 the Fourth Circuit finally ordered system-wide faculty desegregation. Id.

In June 1971, following this Court's decisions in Swann v. Charlotte Mecklenburg Board of Education, 402 U.S. 1 (1971), and Davis v. Board of School Commissioners of Mobile County, 402 U.S. 33 (1971), the Fourth Circuit ordered the district court to require a plan based on the proposal of the Government's expert witness, the "Stolee C plan". See Adams, supra, 444 F.2d 99. The Fourth Circuit ordered "all techniques of desegregation, including pairing or grouping of schools, noncontiguous attendance zones, restructuring of grade levels, and the trans-

portation of pupils." Id. at 101. The district court ordered such a plan implemented in 1971, but refused to require free transportation to pupils assigned to schools beyond walking distance. On a tenth appeal to the Fourth Circuit plaintiffs won an order requiring free bus transportation on the ground that the "Court cannot compel the student to attend a distant school and then fail to provide him with the means to reach that school." Brewer, supra, 456 F.2d at 947.

The school board filed annual reports about its implementation of the plan in 1972, 1973, and 1974. After receiving the third such report, the district court entered the order of February 14, 1975 quoted above. Counsel for plaintiffs and defendants had consented to this order. The case was thus concluded without any further evidence, or any notice to members

of the plaintiff class. The order did not dissolve or modify the court's previous injunction.

The system of segregation prior to the 1971 Plan.

Under Norfolk's 1969 desegregation plan, one high school, five junior highs, and 22 elementary schools were more than 90% black. Brewer, supra 434 F.2d at 410; PX 144. Each of the 22 segregated black elementary schools was established as part of the system of de jure segregation. Sixteen of the 22 schools were 100% black. PX 144. Eleven of these 22 schools are still operated as elementary schools in Norfolk, eleven others were closed between 1972 and 1980.[4]

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[4] The 93-100% black elementary schools in 1969 which are still open are Bowling Park, Tidewater Park, Young Park, St. Helena, Chesterfield, Monroe, Roberts Park, Tucker, Diggs Park, Lindenwood and Oakwood. In addition a one-race black Junior High School in 1969 is now

Plaintiffs' attack on the board's present proposed plan, which is discussed below, focuses on ten schools which were all black in 1969. Nine of these schools are located near all black public housing projects. All of the schools and most of the nearby housing projects were built during the period of de jure school and housing segregation. (PX.163,164,165, 164F).

School Opened	Project Opened
Chesterfield (1920)	Grandy Park (1953)
Tucker (1942)	Oakleaf Park (1942) & Diggs Park (1952)
Bowling Park (1953)	Bowling Park (1952)
Diggs Park (1953)	Diggs Park (1952)
Young Park (1954)	Young Park (1953)
Roberts Park (1964)	Roberts Park (1942)
Tidewater Park (1964)	Tidewater Park (1955)
Jacox (1949)	Roberts Park (1942) & Roberts East (1953) & Moton Park (1962).

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operated as the Jacox Elementary school. The 98-100% black elementary schools closed between 1972 and 1980 were Carey, Gatewood, Goode, Liberty Park, Lincoln, Smallwood, Titus, Titustown, West, Lee, and Marshall.

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Monroe (1903)	subsidized sec.8 housing
St. Helena (1966)	Bell Diamond Manor (1970's) (Subsidized, § 236)

The 1971 Desegregation Plan.

The 1971 plan eliminated all of Norfolk's one-race schools. From 1971 to the 1984 trial (and indeed to the present time), Norfolk has not operated any school which was all black or white. PX 152. The desegregation plan for elementary schools relied on the pairing and grouping technique. Pupils were transported both within single attendance areas, and between paired noncontiguous areas. The school authorities modified the plan to create single zone attendance areas when integrated residential areas developed. When the board made changes to the plan such as school closings it sought to place

a maximum of 70% of any race in a school, but the board did not make annual adjustments to maintain racial balance.

In 1983[5] Norfolk's elementary schools were well desegregated with enrollments ranging from a high of 80.7% black at Bowling Park to 23.7% black at Sewell Point. All but seven elementary schools were reasonably close (within plus or minus 15 percentage points) to the elementary average of 57% black students.

At the time of the trial (1983-84 school year) pupils in 12 elementary schools were assigned in single attendance areas surrounding the schools; the other 28 elementary schools were grouped and paired in a pattern similar to the 1971

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[5] 1983-84 figures are the most recent ones in the record. The Fourth Circuit order denying rehearing also denied plaintiff's motion to supplement the record to add 1984-85 and 1985-86 enrollment statistics. App.162A.

plan. Agreed Ex.17(a). The plan remained in effect during the appeal of this case through the 1985-86 school year. After the Fourth Circuit decision the board resolved to implement its proposed new plan in the fall of 1986.

The Proposed Plan

The school board adopted the Proposed Plan February 2, 1983 by a 5-2 vote with 2 of its 3 black members dissenting. The plan would create a contiguous single attendance area for each elementary school and break up the pairs and clusters which were the basis for the 1971 plan. The new zones did not reflect historic or functional Norfolk neighborhoods and the trial court found that the term "neighborhood schools" was being used "somewhat inaccurately". 627 F.Supp. at 817. The board estimated the expected racial percentages in each school based on initial assign-

ments. The trial judge credited estimates that 10-15% of black pupils, but very few whites, would elect majority-to-minority-race transfers by which students could transfer from schools enrolling over 70% of their race to schools where their race was under 50%.

The board estimated that ten schools will become all-black if the plan is implemented. The ten schools with their racial percentages in 1969, in 1983, and under the proposed plan (PX. 144, 147--before transfers) are:

ELEMENTARY SCHOOLS	1969 BLACK%	1983 BLACK%	PROPOSED BLACK%
Bowling Park	100.0%	80.7%	100.0%
Tidewater Park	100.0%	68.8%	100.0%
Young Park	100.0%	57.1%	100.0%
St.Helena	98.9%	57.7%	99.1%
Chesterfield	92.9%	69.9%	99.1%
Monroe	98.9%	63.3%	99.0%
Roberts Park	100.0%	76.6%	98.0%
Jacox (all black jr.hi)		65.0%	98.0%
Tucker	100.0%	47.2%	98.0%
Diggs Park	100.0%	66.7%	96.9%

It was estimated that 4738 black and 54 white children would attend these 10 schools. The other 26 elementary schools would have 8403 white and 7416 black pupils. The reciprocal effect of this realignment would create 14[6] majority white schools. (Id.):

ELEMENTARY SCHOOLS	1969 BLACK %	1983 BLACK %	PROPOSED BLACK %
Fairlawn	1.9%	64.2%	49.9%
Coleman Place	0.0%	57.2%	44.5%
Calcott	0.0%	61.8%	40.1%
Meadowbrook	6.8%	47.8%	40.0%
Taylor	0.0%	36.4%	39.9%
Willoughby	4.6%	24.3%	36.1%
Camp Allen (opened 1970)		61.1%	36.0%
Sewell Pt	31.3%	23.7%	34.1%
Sherwood Forest	0.0%	49.1%	30.1%
Oceanair	4.1%	45.8%	29.0%
LittleCreek	.2%	57.0%	28.0%
Tarrallton	2.2%	60.9%	22.0%
Ocean View	7.5%	56.8%	17.2%
Bay View	0.0%	44.6%	15.1%

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[6] The 14 schools would enroll 5423 whites (64% of white elementary pupils) and 2587 blacks and average 67.7% white.

Only about 13 of the 36 schools would remain reasonably close to the projected 59% black district average. Thirty-nine percent of black elementary students would attend the 10 all-black schools and two-thirds of white pupils would attend the 14 majority white schools. Only two of the 22 black elementary schools which existed in 1969 would be integrated; the others are either closed or scheduled for resegregation. The chart at the end of this petition (page 1B) contains the enrollments for each elementary school in 1969, 1983 and under the proposed plan.

White Flight

The District Judge found that "the primary objective of the Board in adopting the Proposed Plan" was "providing a response to the threat posed by white flight to the long term integration of the Norfolk school system...." 627 F.Supp. at

824. In agreement with the Board's contention, the Court found that "as a result of busing, the Norfolk school system has lost between 6000 and 8000 white students who otherwise would have enrolled there"; and that "as a result of white flight, the Norfolk schools are faced with imminent resegregation." 627 F.Supp. at 822. The court said that "one of the purposes of the Proposed Plan is to stabilize elementary school population at its present ratio of black students and white students, roughly 60-40." Id. at 821. The judge found "the possibility that the Proposed Plan would increase the number of white students would be a strong point in its favor." Id. at 822.

Before adopting the plan the board employed a consultant, a sociologist, Dr. David Armor who recommended that the board proceed with the plan in a report dated

December 1982.[7] Dr. Armor's report concluded that white enrollment "declined at an alarming rate during the 1970's" because of mandatory busing policies (4th Cir. App. 2164); that "racial balance has little value if all schools are predominantly black" (Id.); and that "there is no indication from Norfolk achievement test results that racial balance has aided the academic progress of its minority students; on the contrary, it is quite possible that some damage was done during the mid-seventies." Id. at 2164-65. He predicted that if busing continued white enrollment would "drop to about 8,000 students in 1987" (id. at 2166) and then

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[7] The Armor report is Agreed Ex.43. The board approved the plan after it received Dr. Armor's report, and expressly relied on his predictions about the return of whites to the system, predicting an increase of 500 white pupils the first year of the plan. See Agreed Ex.1D, note *.

Norfolk would be "nearly 75 percent minority and resegregated according to most definitions of segregation."[8] Id. The report predicted that "If a neighborhood school plan is reinstated and white enrollment stabilizes and increases to 17,000 or so over the next five years, then voluntary methods could meaningfully desegregate up to 10,000 black students --including all of those black parents who would prefer to attend desegregated schools rather than their neighborhood schools." Id. at 2168.

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[8] Petitioners have continually contested Dr. Armor's white flight predictions and his predictions have not come true. More than 14,000 whites and "other" races remained in the system each year from 1981 to 1985. The Fourth Circuit declined to consider enrollment figures for 1984 and 1985 showing that the black-white ratio remained stable at about 1984 59-41 percent black/white from 1981 through the fall of 1985. The board opposed the motion to supplement the record in the district and appellate courts without challenging the accuracy of these facts.

Dr. Armor's predictions that the proposed plan would increase the number of white pupils in the school system rest on a public opinion poll he conducted for the board. Dr. Armor polled groups of black and white public school parents, white pre-school parents, and white private school parents on attitudes about the racial composition of schools and said:

> We find that virtually none of the groups object to sending their child to a school that is half white and half black. Interestingly, while black parents do not object to being a minority, from 40 to 56 percent of white parents do object to a school where most of the students are black. Id. at 2147-2149.

He found "three-fourths of black parents favor busing to achieve racial balance, while two-thirds of white public parents oppose it", and that white opposition was even stronger among the

pre-school and private school parents.[9] Parents were also polled about their intentions if busing was ended, leading Dr. Armor to state that "An end to busing alone would probably capture nearly all public school white parents, would nearly double the participation rate for pre-school parents, and would capture about one-fourth of private school parents..." Id. at 2158. He concluded:

> White parents oppose busing rather strongly, even those who participate in the current busing program. Only a small fraction of parents who are not now using Norfolk schools will do so if busing continues, but if it ends, it appears that significant fractions of non-users would enroll their children in Norfolk public schools. An end to busing could therefore lead to an

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[9] Although Dr. Armor's report does not mention it, his poll data actually showed that a majority of all Norfolk parents favored the present desegregation plan, when his results are weighted appropriately for the fact that the district is majority black. 4th Cir. App. 823.

> increase in white enrollment, and to long-term stabilization of white enrollment. Id. at 2163.

The District Court Decision

The district court opinion and order of July 9, 1984 upheld the Proposed Plan and denied injunctive relief to plaintiffs. The Court reaffirmed the recitals in the order of February 14, 1975 dismissing the Beckett/Brewer case and held that "the Norfolk school system displays today, as it did in 1975, all indicia of 'unitariness.'" 627 F. Supp. at 819. Supporting its conclusion, the court said that the school administration was racially balanced, that the faculty and staff is mixed and that "the overwhelming majority of schoolchildren, of both races, ... attend schools whose student bodies

are mixed." Id. The Court said that the system was "free of discrimination" in 1975 and remains so today. Id. at 820.

The court decided that the effect of the 1975 order was "to shift the burden of proof from the defendant School Board to the plaintiffs, who must now show that the 1983 Proposed Plan results from an intent on the part of the School Board to discriminate on the basis of race." Id. Citing Keyes v. School District No. 1, 413 U.S. 189 (1973), the court defined a dual system as "one which is created by state authorities acting intentionally, with discriminatory purpose, to segregate the races." The court said cases such as Green v. County School Board, 391 U.S. 430 (1968), and Swann, supra, which impose an affirmative duty on dual school systems to eliminate segregation, were inapplicable since Norfolk had "fully discharged its

affirmative obligation to create a unitary system". Id. It held that plaintiffs must prove an intent to discriminate and that such intent "will not be inferred solely from the disproportionate impact of a particular measure upon one race." Id. It rejected plaintiffs' arguments that Swann required the board to justify one-race schools, saying "Swann is inapplicable here". Id. at 821.

The court found that the board's purpose to use the new plan to attract white students to the system and prevent white flight was appropriate and indeed a "strong point in its favor". Id. at 822. The court acknowledged that under United States v. Scotland Neck Board of Education, 407 U.S. 484 (1972), white flight will not excuse a failure to desegregate a dual system, but found that case also distinguishable because Norfolk "was

declared unitary in 1975 and the Board's continuing, affirmative duty to desegregate was discharged at that time." Id. at 824.

The court rejected plaintiffs' argument that another Board objective in adopting the plan, e.g., to increase the level of parental involvement in the schools, was pretextual, and also rejected an argument based on the fact that an alternative board plan (Plan II) could have reduced busing while preserving integration. Id. at 824-25. The court found Plan II "not viable" solely because of the lack of vocal support in community meetings; it made no finding that the plan was infeasible or unreasonable. Id. at 825.

The court found that Norfolk's 15 public housing projects and 7 subsidized housing projects are occupied almost

exclusively by blacks and house about 25% of Norfolk's black children. Id. at 826. Noting that the projects were built to eradicate slums and provide livable housing for low-income residents, the court said it "defies logic" to suggest that this makes the School Board responsible "in some way for the fact that under the Proposed Plan, the racially identifiable black schools are located in close proximity to those projects." Id. at 826.

The Court of Appeals Decision

The Fourth Circuit affirmed the finding that the district was now unitary as not clearly erroneous, and agreed with the district court that this shifted the burden of proof to plaintiffs. The Court acknowledged that, under Swann, school boards have the burden of showing that any one-race schools are "genuinely nondiscriminatory and not vestiges of past

segregation." 784 F.2d at 535. However, the court declined to apply the rule of Swann to Norfolk, holding instead that:

> "Once a constitutional violation has been remedied, any further judicial action regarding student assignments without a new showing of discriminatory intent would amount to the setting of racial quotas, which have been consistently condemned by the Court in the context of school integration absent a need to remedy an unlawful condition. 784 F.2d at 538.

Judge Widener's opinion for the panel acknowledged that it could "find no case decided in the same situation as that before us", (789 F.2d at 537) and then rested on reasoning in a Ninth Circuit decision, Spangler v. Pasadena, 611 F.2d 1239 (9th Cir. 1979). The Fourth Circuit expressly declined to apply the principles of five of this Court's major school decisions, Columbus Board of Education v. Penick, 443 U.S. 449 (1979); Dayton Board

of Education v. Brinkman, 443 U.S. 526 (1979) (Dayton II); Keyes, supra; Swann, supra; and Green, supra. The court said "all of those cases involved state sanctioned discriminating school districts that had not dismantled their dual systems." 784 F.2d at 539. "None had reached the goal of a unitary system as Norfolk has done." Id.

The court approved the trial court's reasoning on the question of white flight, finding Scotland Neck, supra, and Monroe v. Board of Commissioners, 391 U.S. 450 (1968), inapplicable because "Norfolk is not operating a dual school system with a present duty to desegregate." 784 F.2d at 539. The court held the board's consideration of white flight and its effort to "stabilize school integration in Norfolk" were "legitimate". Id. at 540. The court also generally approved the district

court's findings and reasoning on the other issues. The court endorsed the proposed plan as "a reasonable attempt by the school board to keep as many white students in public education as possible and so achieve a stably integrated school system." Id. at 543. It found the plan's "creating several black schools is disquieting" but said that "that fact alone is not sufficient to prove discriminatory intent." Id. at 543.

REASONS FOR GRANTING THE WRIT

I.

THE CASE PRESENTS QUESTIONS OF OBVIOUS NATIONAL IMPORTANCE WHICH ARE BOUND TO ARISE IN EVERY PAST, PRESENT OR FUTURE SCHOOL DESEGREGATION CASE.

This is a case of enormous and sweeping impact. The rule of law announced by the courts below, would -- if followed

generally -- permit a very general resegregation of the public schools of the South.

During the 32 years since Brown v. Board of Education, supra, the federal courts have devoted countless hours to deciding hundreds of school desegregation cases. These decisions have eventually produced a measure of integration in the public schools of the South. Progress toward eradicating segregation -- typified in many respects by Norfolk's experience -- is directly traceable to this Court's repeated rulings implementing Brown -- rulings which hold that school boards have an affirmative duty to desegregate, that the courts must demand desegregation plans that "work", that desegregation must not yield to public opposition, that the need for remedial criteria sufficiently specific to insure compliance justifies a

legal presumption against one-race schools, and that racially "neutral" assignment plans such as "neighborhood" attendance zones are inadequate if they fail to counteract the continuing effects of past school segregation. These are the principles of Green, Swann, and Davis, supra, which the Court reiterated and applied in such cases as Monroe, Scotland Neck, Dayton II, and Columbus, supra. It is these principles that the courts below have declined to apply to Norfolk's proposed plan. They have thus written a charter for the resegregation of the public schools of the South.

There can be no doubt that the proposed plan could not pass muster as a desegregation plan under Green, Swann and Davis. If those decisions apply, the invalidity of the proposed plan is obvious and not seriously debatable. It is only

by declaring that the entire series of precedents which are the bedrock of school desegregation throughout the nation are "inapplicable" that the courts below could approve Norfolk's proposed plan.

This treatment of Swann and cognate cases presents an issue of first impression which is bound to arise in every school case. At some point there must come a time in every desegregation suit when the school district is "unitary" in the sense that it will have carried out all of the judicial orders required by Swann and achieved at least the momentary termination of a dual system. Under the reasoning of the courts below, the arrival of that inevitable moment entitles each school district immediately to dismantle its desegregation plan, ignore the principles of Swann, and adopt a new assignment plan with substantial resegre-

gative impact, provided only that this is accomplished without revealing a purpose to "discriminate" against black pupils.

The significance of such a rule is manifest. It provides an easy and obvious way to nullify school desegregation decrees, threatening as a practical matter to undermine school desegregation plans everywhere. No principle of school desegregation law established since Brown is valid more than transitorily if the Riddick ruling stands. Every desegregation plan adopted since Brown may be uprooted, and we will face another generation of litigation over long-closed school cases.

Promptly after the Fourth Circuit decision, the U.S. Department of Justice, supporting the decision below, issued a press release listing 117 school districts that have been declared unitary and 47

districts whose orders have been "dismissed". Department of Justice Press Release dated February 18, 1986. The Department, which has continued to oppose the use of busing and other Swann remedies, issued the release in an effort to encourage districts to emulate Norfolk. Oklahoma City did so even before the Fourth Circuit ruled, and actually resegregated some of its schools in the fall of 1985. That case is now pending after argument in the Tenth Circuit. Dowell v. Board of Education of Oklahoma City Public Schools, 606 F.Supp. 1548 (W.D. Okla. 1985), pending on appeal as 10th Cir. No. 85-1886, argued March 20, 1986.

The rule announced below also foments wasteful litigation in school districts which have not yet been declared unitary. If the Fourth Circuit rule stands,

plaintiffs' lawyers have an overwhelming incentive to resist the closure of all school cases, and any acknowledgement that a district is "unitary", as long as possible, for they will know full well that all desegregation is potentially lost as soon as a district is declared "unitary". The plaintiffs' lawyers who consented to the 1975 termination of the Norfolk school case could then act on the reasonable premise that achieving present compliance through a permanent injunction was a good enough reason to end a 19-year old case. They could reasonably leave future problems to be settled when and if they arose, rather than anticipating the prompt reversal of the plan that had produced compliance. The Fourth Circuit's Riddick doctrine would make such a decision irresponsible in any future case, because a lawyer would know that an

agreement that a system was unitary was tantamount to an agreement that it could be resegregated forthwith.

The importance of the case to the next generation of black students in Norfolk is also evident. The new plan is particularly destructive in the way it concentrates school segregation among low-income blacks who reside in all-black public housing projects. Almost forty percent of Norfolk's black elementary students will be segregated during the formative kindergarten through sixth grade years. If the plan is implemented, the board will have substantially reconstituted the situation which existed during the 1960's when integration was available only for the few blacks who took the initiative of transferring out of black schools. Monroe v. Board of Commissioners, 391 U.S. 450 (1968).

II.

THE DECISIONS BELOW ARE INCONSISTENT WITH THE PRINCIPLES OF SWANN v. BOARD OF EDUCATION AND OTHER DECISIONS BY THIS COURT.

We submit that the courts below erred in declining to apply the principles of Swann when judging the validity of Norfolk's Proposed Plan. The courts did not apply Swann's presumption against one-race schools which was announced in the unanimous opinion for the Court by the Chief Justice:

> No per se rule can adequately embrace all the difficulties of reconciling the competing interests involved; but in a system with a history of segregation the need for remedial criteria of sufficient specificity to assure a school authority's compliance with its constitutional duty warrants a presumption against schools that are substantially disproportionate in their racial composition. 402 U.S. at 26.

The courts below also declined to require the school board to show that the ten proposed one-race schools did not result from past discrimination as required in the next passage in Swann:

> Where the school authority's proposed plan for conversion from a dual to a unitary school system contemplates the continued existence of some schools that are all or predominantly of one race, they have the burden of showing that such school assignments are genuinely nondiscriminatory. The court should scrutinize such schools, and the burden upon the school authorities will be to satisfy the court that their racial composition is not the result of present or past discriminatory action on their part. 402 U.S. at 26.

The courts below similarly failed to judge the "adequacy" of the proposed single-attendance-zone plan in accord with Swann's admonition that:

> "Racially neutral" assignment plans proposed by school authorities to a district court may be inadequate; such plans may fail to counteract the continuing effects of past school segregation resulting from discriminatory location of school sites or

> distortion of school size in order to achieve or maintain an artificial racial separation. 402 U.S at 28.

A proper application of these principles would surely condemn the plan because it is undisputed that the same ten schools which Norfolk now proposes to operate as one-race schools were previously operated as one-race all-black schools as part of the de jure system of segregation. The size and location of all ten schools were determined during the dual system. All ten schools were built and planned to serve the black children who lived nearby. Norfolk followed the "classic pattern of building schools specifically intended for Negro or white students." Swann, supra, 402 U.S. at 21. The schools are still located in the same all-black neighborhoods near the same all-black public housing projects that

existed under the dual system. The ghetto areas which existed in 1960 and 1970 remain all-black today. The proposed racial composition of these schools is the obvious result of past discriminatory action on the part of the school authorities, because the proposed plan substantially reconstitutes the segregated neighborhood school plan of 1969 in those school areas. The plan reestablishes the pattern of de jure segregation in the same place and by the same method that existed previously. The school board could not possibly show "that its past segregative acts did not create or contribute to the current [proposed] segregated condition." Keyes, supra, 413 U.S. at 211.

The racial composition of these schools is plainly the "result of past discriminatory action" by school officials. The conditions which made a

neighborhood assignment plan inadequate and unacceptable in 1971 still exist: namely all-black ghettos adjacent to schools built expressly to serve those ghettos. Thus the reason for the Swann rule still exists. The fact that the board temporarily obeyed the prior injunction is not a sound basis for applying a different rule of law to the same facts which called for constitutional relief when the courts did apply Swann to Norfolk. Under Swann and Davis, none of the proposed plan's purposes -- preventing white flight, increasing parental involvement, promoting neighborhood schools -- would justify extensive segregation which could be readily avoided by available plans of integration.

The courts below held that the Swann inquiry whether pupil assignments are "genuinely nondiscriminatory" or are "the

result of present or past discriminatory action on [the State's] ... part" is inappropriate and inapplicable because the district has been "unitary" since 1975. But nothing in the 1975 order did, or could appropriately, confer on the board permission to undo the very steps that made the system unitary. The Courts below held that the system is presently unitary because all the schools are now desegregated. But there is no logic to the notion that a school system which becomes "unitary" by eliminating segregation remains "unitary" in perpetuity even if it deliberately destroys the conditions that made it unitary and reestablishes the pattern of segregation that preceded its "unitariness".

A school system that attains "unitariness" by effectuating a court-ordered plan for integrating its schools is like a

heart patient who attains "health" by having a pacemaker implanted. Just as a patient who is healthy by virtue of a pacemaker becomes sick when it is removed, a school system that is "unitary" because of an affirmative desegregation plan employing special means of insuring integration will become "dual" again when it deliberately reconstitutes a substantial number of its one-race schools by revoking the plan.

The opinions below assert that the school board acquired a new legal status when it "discharged" its affirmative duty to desegregate. But there is no reason in a doctrine that a school board's temporary obedience to a permanent injunction gives it a legal right to reestablish the exact situation that the injunction was designed to bring to an end. If the facts surrounding the Norfolk schools had origin-

ally permitted the board to dismantle its dual system simply by abandoning illegal action and acting without discriminatory intent in a "color blind" fashion, there might be logic to the lower courts' approach. But, the history of efforts to integrate Norfolk's schools plainly demonstrates that the affirmative constitutional duty to eradicate segregation could not be "discharged" by "color blind" passivity. "Discharging" the affirmative duty required pairing and non-contiguous zones designed to produce actual integration in the context of the all-black schools built to serve segregated neighborhoods and one-race public housing projects. The proposed plan to abolish the pairing and to reestablish segregation on the basis of the same neighborhood pattern violates the same constitutional duty that was temporarily fulfilled.

The reasoning of the Court below is at war with Swann's stated objective which is "to dismantle the dual system". 402 U.S. at 28. In Dayton Board of Education v. Brinkman, 433 U.S. 406, 414 (1977) (Dayton I), this Court directly held that the rescission of a desegregation plan which a board had a constitutional duty to adopt would violate the Constitution. See Dayton II, supra, 443 U.S. at 531, n.5. And in Columbus Board of Education v. Penick, 443 U.S. 449, 459 (1979), the Court announced a corollary rule that "Each instance of a failure or refusal to fulfill this affirmative duty continues the violation of the Fourteenth Amendment." It is logical that a deliberate and intentional plan to destroy the essential features of a remedial scheme that made desegregation work and to recreate the preexisting conditions is

equally a violation of the Fourteenth Amendment. As stated in Dayton II, supra, the "Board has had an affirmative responsibility to see that pupil assignment policies and school construction and abandonment practices 'are not used and do not serve to perpetuate or re-establish the dual school system.'" 443 U.S. at 538, quoting Swann, supra.

The rule announced below would, as a practical matter, repudiate Swann, Green, Davis, Columbus and Dayton. Such a rule deserves plenary review by this Court because the practical repudiation of a series of the Court's most important constitutional decisions is as important as the decisions themselves.

III.

THE DECISIONS BELOW CONFLICT WITH THE PRINCIPLES OF THIS COURT'S KEYES, DAYTON, AND COLUMBUS DECISIONS DEFINING UNCONSTITUTIONAL SEGREGATIVE ACTIONS, AND WITH SCOTLAND NECK AND OTHER CASES REJECTING "WHITE FLIGHT" AND OPPOSITION TO DESEGREGATION AS A JUSTIFICATION FOR SEGREGATION.

Both courts below acknowledged the substantial segregative effect of the proposed plan but found that "the discriminatory impact alone shown here is not sufficient to make out such a claim" of "intent to discriminate". 784 F.2d at 543. Both courts understood that the primary purpose of the plan was to attract white students to the Norfolk public schools and thereby counteract "white flight", but found this acceptable. We believe that both holdings are inconsistent with this Court's decisions.

Petitioners submit that the segregative impact of the proposed Norfolk plan is so stark as to put the case in the class of extreme cases like Yick Wo v. Hopkins, 118 U.S. 356 (1886), and Gomillion v. Lightfoot, 364 U.S. 339 (1960) where impact alone reveals a purpose to segregate. See Arlington Heights v. Metro. Housing Corp., 429 U.S. 252, 266 (1977). The historical background of de jure segregation in the very same schools the proposed plan will segregate makes the inference of segregative purpose inescapable. Arlington Heights, supra, 429 U.S. at 267. But petitioners need not rely on impact and history alone because the racial purpose in this case was not at all covert.

The racial character of the board's primary goal in implementing the plan is quite openly acknowledged. The board

adopted the plan in reliance upon its consultant's advice that white parents opposed schools with black majorities, and that the way to stem white flight and increase the white school population was to end busing (which whites opposed) and create schools with the kind of racial composition favored by whites. Since 57 percent of elementary pupils were black, the only way to get a group of majority-white schools was to create a group of all-black schools. The proposed plan groups two-thirds of the white pupils in majority-white schools by the expedient of creating ten all-black schools.

Both courts below acknowledged this Court's holdings rejecting "white flight" as a justification for continued segregation in other contexts. United States v. Scotland Neck Board of Education, 407 U.S. 484, 491 (1972), and Monroe v. Board

of Commissioners, 391 U.S. 450 (1968). But they limited those precedents to school districts operating dual systems. Neither court mentioned the fact that the objective of stemming "white flight" was explicitly racial. This plan is based on the board's policy of trying to "stabilize" the ratio of black and white pupil at about 60% black and 40% white. A purpose to manipulate the racial composition of the school system is not a racially neutral or color blind purpose. The concurring opinion in Scotland Neck, supra, 407 U.S. 484, 493, by the Chief Justice (joined by Justices Blackmun, Powell, and Rehnquist) makes exactly this point where "white flight" was urged to justify the creation of a separate school system, and the proposal was held unconstitutional in part because:

> "...the Scotland Neck severance was substantially motivated by the desire to create a predominantly white system more acceptable to the white parents of Scotland Neck. In other words, the new system was designed to minimize the number of Negro children attending school with the white children residing in Scotland Neck." Id. at 493.

So in Norfolk the board set out to stop the district from becoming 75% or greater black, as its consultant predicted, and to stabilize the racial ratio. The recommended means of accomplishing this was to control the racial composition of the schools attended by white pupils, so as to attract whites to attend the system. The cost of attracting whites was segregating blacks in all-black "neighborhood" schools. This is as deliberate a segregation policy as any ever encountered, and is none the less unconstitutional because it is overt and not covert. And of course cases indicating that a benign

consideration of "white flight" might help promote integration do not assert that such a purpose is color blind or that it is permissible as a justification for creating ten all-black schools. Nor is the policy any less racial because blacks in the all-black schools can "volunteer" to transfer out, or because the board promises to make the "separate" schools "equal".

The combination of an explicitly racial purpose and a substantially segregative impact makes out a plain violation of the Fourteenth Amendment. See Keyes, supra. There is no requirement that the plaintiffs also prove that the board adopted the plan with malice toward black children. The fact that Norfolk's present school authorities sincerely do not believe that integration is worthwhile does not justify segregation in 1986 any

more than the similar views of their predecessors did. Brown v. Board of Education, supra, is premised on the harm segregation does to black children and not on the theory that the proponents of segregation necessarily had malice toward them.

It is enough to show a violation of the Equal Protection Clause that the purpose of the board in abandoning the desegregation plan was to appeal to the views of white people who opposed the desegregation plan. Black people are not accorded equal protection of the laws when a school board acts to segregate black children because white people prefer a different racial composition in the schools. See Monroe, supra; Scotland Neck, supra; cf. Cooper v. Aaron, 358 U.S. 1 (1958).

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for certiorari should be granted and that the judgment below should be reversed.

Respectfully submitted,

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RACIAL COMPOSITION OF NORFOLK PUBLIC SCHOOLS, 1969, 1983 AND PROPOSED PLAN.
SOURCES: PX 144, 147(proposed plan based on 1984 assignments before transfers).

ELEMENTARY SCHOOLS	1969 WHITE	1969 BLACK	1969 TOTAL	1969 BLACK %	1983 WHITE	1983 BLACK	1983 TOTAL	1983 BLACK %	PROPOSED WHITE	PROPOSED BLACK	PROPOSED TOTAL	PROPOSED BLACK %
Bowling Park	0	934	934	100.0%	110	460	570	80.7%	0	665	665	100.0%
Tidewater Park	0	513	513	100.0%	100	220	320	68.8%	0	291	291	100.0%
Young Park	0	572	572	100.0%	149	198	347	57.1%	0	541	541	100.0%
St.Helena	4	357	361	98.9%	161	220	381	57.7%	3	343	346	99.1%
Chesterfield	51	671	722	92.9%	135	314	449	69.9%	4	427	431	99.1%
Monroe	13	1185	1198	98.9%	163	281	444	63.3%	7	701	708	99.0%
Roberts Park	0	513	513	100.0%	65	213	278	76.6%	10	489	499	98.0%
Jacox	(All black Jr. High school in 1969)				238	442	680	65.0%	13	630	643	98.0%
Tucker	0	477	477	100.0%	143	128	271	47.2%	7	336	343	98.0%
Diggs Park	0	677	677	100.0%	121	242	363	66.7%	10	315	325	96.9%
Lindenwood	0	713	713	100.0%	142	376	518	72.6%	139	464	603	76.9%
Willard	(opened 1979)				214	537	751	71.5%	183	519	702	73.9%
Norview	406	273	679	40.2%	209	481	690	69.7%	224	475	699	68.0%
Larrymore	1067	115	1182	9.7%	282	515	797	64.6%	313	581	894	65.0%
Granby	642	20	662	3.0%	223	270	493	54.8%	252	447	699	63.9%
Ingleside	428	22	450	4.9%	272	430	702	61.3%	288	433	721	60.1%
Crossroads	1046	73	1119	6.5%	324	314	638	49.2%	336	446	782	57.0%
Ghent	(opened 1978)				232	266	498	53.4%	267	353	620	56.9%
Oakwood	0	442	442	100.0%	164	199	363	54.8%	226	277	503	55.1%
Suburban Park	542	36	578	6.2%	235	359	594	60.4%	198	241	439	54.9%
Poplar Halls	560	22	582	3.8%	106	235	341	68.9%	220	258	478	54.0%
Larchmont	630	100	730	13.7%	379	243	622	39.1%	334	335	669	50.1%
Fairlawn	512	10	522	1.9%	128	230	358	64.2%	183	182	365	49.9%
Coleman Place	865	0	865	0.0%	327	437	764	57.2%	452	363	815	44.5%
Calcott	841	0	841	0.0%	177	286	463	61.8%	293	196	489	40.1%
Meadowbrook	561	41	602	6.8%	283	259	542	47.8%	320	213	533	40.0%
Taylor	383	0	383	0.0%	245	140	385	36.4%	232	154	386	39.9%
Willoughby	750	36	786	4.6%	396	127	523	24.3%	212	120	332	36.1%
Camp Allen	(opened 1970)				316	496	812	61.1%	332	187	519	36.0%
Sewell Pt	603	275	878	31.3%	444	138	582	23.7%	420	217	637	34.1%
Sherwood Forest	666	0	666	0.0%	323	311	634	49.1%	437	188	625	30.1%
Oceanair	678	29	707	4.1%	356	301	657	45.8%	491	201	692	29.0%
LittleCreek	1254	2	1256	.2%	423	560	983	57.0%	747	291	1038	28.0%
Tarrallton	631	14	645	2.2%	137	213	350	60.9%	295	83	378	22.0%
Ocean View	1002	81	1083	7.5%	310	407	717	56.8%	434	90	524	17.2%
Bay View	874	0	874	0.0%	261	210	471	44.6%	575	102	677	15.1%

ELEMENTARY SCHOOLS	1969 WHITE	1969 BLACK	1969 TOTAL	1969 BLACK %	1983 WHITE	1983 BLACK	1983 TOTAL	1983 BLACK %	PROPOSED WHITE	PROPOSED BLACK	PROPOSED TOTAL	PROPOSED BLACK %
Carey	0	366	366	100.0%(closed 1978)								
Gatewood	0	453	453	100.0%(closed 1979)								
Goode	0	392	392	100.0%(closed 1972)								
Liberty Park	0	553	553	100.0%(closed 1980)								
Lincoln	0	378	378	100.0%(closed 1972)								
Smallwood	0	474	474	100.0%(closed 1970)								
Titus	0	519	519	100.0%(closed 1979)								
Titustown	0	277	277	100.0%(closed 1970)								
West	0	472	472	100.0%(closed 1980)								
Lee	7	449	456	98.5%(closed 1974)								
Marshall	10	525	535	98.1%(closed 1978)								
Campostella	45	136	181	75.1%(closed 1976)								
Stuart	281	559	840	66.5%	143	224	367	61.0%(proposed closing)				
Easton	410	45	455	9.9%	102	192	294	65.3%(proposed closing)				
Lansdale	716	32	748	4.3%(closed 1981)								
Pineridge	245	10	255	3.9%(closed 1978)								
Lakewood	746	27	773	3.5%	38	53	91	58.2%				
Lafayette	271	6	277	2.2%(closed 1972)								
Ballentine	252	1	253	.4%(closed 1980)								
East Ocean View	168	0	168	0.0%	195	84	279	30.1%(proposed closing)				
Pretty Lake	124	0	124	0.0%(closed 1980)								
Total Elementary	18284	13877	32161	43.1%	8771	11611	20382	57.0%	8457	12154	20611	59.0%